EXHIBIT A

UNITED STATES COURT OF APPEALS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SECURITY WALLS, LLC	)	
	)	
and	)	**Case 13-CA-114946**
	)	
INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) AND ITS LOCAL NO. 554	)	

GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

Counsel for the General Counsel hereby moves the Board, in order to effectuate the purposes of the Act and to avoid unnecessary delay, to exercise its power under Section 102.24(b) of the Board's Rules and Regulations, Series 8, as amended, and grant its Motion for Summary Judgment on the basis of the pleadings and the contents of this Motion. The charge, first amended charge, complaint and answer, first amended complaint and answer to the first amended complaint, the Respondent's cross-filed Motion for Summary Judgment, and the documentary evidence relevant to the charge in Case 13-CA-114946 comprise the record in this case and show that there are no genuine issues of material fact. The General Counsel is, therefore, entitled to summary judgment as a matter of law. Alternatively, given that neither Respondent nor the General Counsel see the need for a hearing, the Board should issue a Notice to Show Cause and set a briefing schedule.

I. UNDISPUTED MATERIAL FACTS

1. The charge in this proceeding was filed by the International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554 ("Union") on October 18, 2013, and a copy was served by regular mail on Security Walls, LLC ("Respondent") on October 18, 2013. (GC 1, 8, 9, 10, and 11.)

2. The first amended charge in this proceeding was filed by the Union on January 30, 2014, and a copy was served by regular mail on Respondent on January 30, 2014. (GC 2, 8, 9, 10, and 11.)

3. At all material times, Respondent, a limited liability company with an office and place of business in Knoxville, Tennessee, has been providing security services for Argonne National Laboratory located in Argonne, Illinois, hereafter referred to as Respondent's facility. (GC 8, 9, 10, and 11.)

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act):

   Juanita Walls—Chief Manager

   Hunter Gilmore—Project Manager (GC 8, 9, 10, and 11.)

5. The following employees of Respondent ("the Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   All full-time, and regular part-time Security Officers and Sergeants performing security duties as defined in Section 9(b)(3) of the Act for the Employer at the Argonne National Laboratory, located at 9700 South Cass Avenue, Argonne, Illinois, but excluding all office clerical employees, professional employees and supervisors as defined in the Act.

(GC 8, 9, 10, and 11.)

6. The Union was certified as the representative of the Unit in Case Number 13-RC-21717. (GC 12.)

7. About December 1, 2012, Respondent, through Juanita Walls, recognized the Union as the exclusive collective-bargaining representative of the Unit. (GC 8, 9, 10, and 11.)

8. Respondent and the Union bargained and entered into tentative agreements on various collective-bargaining agreement provisions beginning about February 2013 and ending about December 2013. (GC 3, 4, 5, and 12.)

9. Respondent and the Union entered into a recognition tentative agreement on February 19, 2013. (GC 5.)

10. Respondent and the Union entered into a management rights tentative agreement on April 17, 2013. (GC 5 and 12.)

11. Respondent and the Union entered into a grievance and arbitration tentative agreement on April 17, 2013. (GC 3, 4, 5, and 12.)

12. About August 18, 2013, Respondent unilaterally suspended security officer Matthew Terres. (GC 3, 4, 7, 8, 9, 10, 11, and 12.)

13. About August 19, 20 and 21, 2013, the Union, via email, requested that Respondent furnish the Union with the following information:

i) The reasons for Matthew Terres' removal from the work force;
ii) Why Terres was not advised of the reasons for his removal;
iii) Copies of any/all documents or written material pertaining to Matthew Terres' suspension. (GC 8, 9, 10, 11, and 12.)

14. Respondent has not supplied the information requested by the Union on August 19, 20, and 21, 2013. (GC 8, 9, 10, 11, and 12.)

15. About August 22, 2013, Respondent unilaterally terminated security officer Matthew Terres. (GC 7, 8, 9, 10, 11, and 12.)

16. Respondent's Chief Manager, Juanita Walls, signed the parties' first collective-bargaining agreement about January 15, 2014. (GC 6 and 12.)

17. Union Director Guy Thomas signed the parties' first collective-bargaining agreement about January 24, 2014. (GC 6 and 12.)

18. Respondent filed a Motion for Summary Judgment and Memorandum in Support (collectively "Respondent's Motion") with the Board on March 31, 2014 that admitted that there are no material issues of genuine fact necessitating a hearing before an administrative law judge in this case. (GC 12.)

II. ARGUMENT

There are no genuine issues of material facts in dispute here. Respondent has admitted in its Motion for Summary Judgment (GC 12, p.2) and in its Answer to the First Amended Complaint (GC 11)) that it suspended and discharged security officer Matthew Terres without first notifying and offering to bargain with the Union. Respondent has also admitted that it failed to provide the requested information regarding Terres' discipline to the Union. The only issues in this case are legal ones concerning Respondent's obligation to bargain over its discretionary discipline of security officer Terres and to provide information in response to the Union's information request. Board law clearly establishes that Respondent has breached its duty to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by failing to bargain with the Union over security officer Terres' discretionary suspension and discharge. Respondent's argument that the tentative agreements reached during the course of bargaining constitute a "binding" grievance-arbitration process such as to relieve it of its duty to bargain with the Union over discretionary discipline has no support in Board law. Further, Respondent has breached its duty to bargain in good faith in violation of Section 8(a)(5) and (1) by failing and refusing to furnish the Union with presumptively relevant requested information. Respondent's defense—that the Union was due no information regarding the reasons for Terres' suspension absent the filing of a grievance—is meritless.

A. THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE AND THE GENERAL COUNSEL IS DUE JUDGMENT AS A MATTER OF LAW

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The Board, in its discretion, may grant a motion for summary judgment where there is an absence of a genuine issue of material fact requiring a hearing before an administrative law judge. Board Rules & Regulations Rule 102.24(b); see, *e.g.*, *UNITE HERE Local 1*, 358 NLRB No. 22, slip op. at 13 (Mar. 23, 2012) (refusal to defer pursuant to *Collyer*); *Tile, Marble, Terrazzo Finishers And Shopworkers Local 47-T (Grazzini Bros.)*, 315 NLRB 520, 522 (1994) (union filed lawsuit with an unlawful object). Summary judgment is particularly appropriate where the parties' motions and supporting documents clearly indicate that they do not disagree as to the material facts at issue in a particular case. See *Teamsters Local 579 (Chambers and Owen, Inc.)*, 350 NLRB 1166, 1168 (2007). In this case, there is no genuine issue of material fact in need of a hearing. The Board should decide the case based on the General Counsel's Motion for Summary Judgment and order an appropriate remedy, including a make-whole remedy requiring Respondent to reinstate security officer Terres and pay him backpay.

A review of Respondent's Answer to the First Amended Complaint and its Motion for Summary Judgment supports finding that is no genuine issue to any material fact alleged in the Complaint. Respondent's denials instead challenge the legal conclusions drawn from the factual allegations. For instance, Respondent in its Answer denies the legal conclusion alleged in paragraph V(e) of the First Amended Complaint—that the Union has been the 9(a) representative of its employees at all material times. (GC 11.) Yet, Respondent goes on to admits in its Answer (GC 11.) that it recognized the Union as the sole representative of its employees about December 1, 2012, and it also admits in its Motion for Summary Judgment (GC 12, p. 2) and December 2, 2013 (GC 3, p. 1.), position statement that it was actively engaged in negotiations with the Union for a first collective-bargaining agreement at the time that it suspended and discharged security officer Terres. Accordingly, Respondent's pleadings and position statements negate any possibility that the Union was not the 9(a) representative of Respondent's employees at all material times.

Respondent denies, in its Answer to the First Amended Complaint, the allegations pled in paragraphs VI(c-e), VII (b-c), and paragraph VIII. (GC 11.) However, these denials solely go to the legal conclusions drawn from the undisputed material facts. With regard to paragraphs VI(c-e), Respondent contends that the discipline it imposed on security officer Terres was for "just cause" but it denies that it had a legal duty to notify and bargain with the Union prior to disciplining this employee. (GC 11.) Respondent's flawed legal argument that there was a "binding" grievance and arbitration procedure in place at the time of Terres' discipline is addressed below. However, it is clear from Respondent's Motion and position statements that its dispute is whether the facts are, as a matter of law, sufficient to establish a duty to provide notice and bargain with the Union prior to imposing discipline. (GC 3, 4, and 12, pp. 6-9.)

Likewise, with regard to paragraphs VII (b-c) of the First Amended Complaint, Respondent challenges whether it had a duty to supply the requested information related to security officer Terres' discipline, not whether it supplied the information. (GC 9, 11, and 12, pp. 2-3, 5-6.) Pursuant to Board Rules and Regulations Section 102.20, because Respondent did not specifically deny that it failed to supply the requested information, Respondent has admitted it.

Finally, Respondent denies the legal conclusions in paragraph VIII: that it failed to bargain with the Union as the representative of its employees, that Respondent's unfair labor practices affect commerce, and that the General Counsel's requested remedy is appropriate. (GC 9, 11, and 12, pp. 5-9) Each of these is a legal issue, not an issue of fact. As Respondent concedes in its Motion (GC 12, p. 1), there are in the case no genuine issues of material fact for which a hearing is required.

B. RESPONDENT VIOLATED SECTION 8(a)(5) OF THE ACT BY FAILING TO BARGAIN WITH THE UNION OVER DISCRETIONARY DISCIPLINE OF SECURITY OFFICER TERRES

Where a union represents a unit of employees, in the absence of an initial collective-bargaining agreement, there is a duty on the part of the employer to negotiate with the union over discretionary decisions involving wages, hours, and working conditions, including discretionary decisions to suspend and discharge an employee. *Alan Ritchey, Inc.*, 359 NLRB No. 40, slip op. at 1 (Dec. 14, 2012). "Disciplinary actions such as suspension...and discharge plainly have an inevitable and immediate impact on employees' tenure, status or earnings....Requiring bargaining before these sanctions are imposed is appropriate...[b]ecause of this impact on the employee and because of the harm caused to the union's effectiveness as the employees' representative if bargaining is postponed." *Id.* at 4. This bargaining obligation only attaches absent an interim agreement with the union providing for a grievance procedure to resolve such disputes. *Id.* at 1. The disciplinary actions at issue here meet all five of the requirements as outlined by the Board in *Alan Ritchey*: 1) the Union was the newly-recognized representative of the Respondent's security officers and sergeants; 2) Terres' discipline occurred before the parties had in place a first contract; (3) Respondent exercised discretion in deciding to suspend and then discharge Terres; (4) Respondent has not demonstrated any exigent circumstances requiring immediate action such that it had a "reasonable, good-faith belief" that Terres' continued presence on the job presented a serious, imminent danger to the employer's business or personnel; and (5) there was no interim grievance procedure in place at the time of Terres' discharge.

Taking each *Alan Ritchey* element in turn, first, the Union was recognized by the new employer of these employees beginning December 1, 2012, when Respondent took over the security contract at Argonne from Whitestone Group.[1] (GC 4, p. 1; GC 9 and 11.) Second, Terres' suspension occurred on August 18, 2013, and he was discharged on August 22, 2013.

[1] Counsel for the General Counsel notes that Respondent's Motion states on page 3 that it was a successor to TPS Security, but determination of this fact is not relevant to the legal issues in this case. (GC 12.)

(GC 3, p. 2; GC 4, p. 4; GC 7, 8, 9, 10, and 11.) The Union and the Respondent agreed on the terms of the first collective-bargaining agreement about December 2, 2013, but did not execute it until January 24, 2013. (GC 3, p. 1; GC 4, p. 1; GC 6, and 12, p. 2.) Thus, Terres' discipline occurred well before the parties had a first contract in place.

Third, Respondent exercised discretion in its decision to first suspend and then discharge security officer Terres. Respondent admits that it unilaterally decided to suspend and discharge security officer Terres. (GC 3, p. 1; GC 4, p. 2; GC 9, 11, and 12, p. 5.) As observed by the *Alan Ritchey* Board, such unilateral action with regard to a mandatory subject of bargaining undermines the Union by suggesting to workers that the Union is powerless to protect them. See 358 NLRB No. 40, slip op. at 10 (quoting *NLRB v. Advertisers Mfg. Co.*, 823 F.2d 1086, 1090 (7th Cir. 1987)). Likewise, the employee handbook language quoted in Terres' discharge notice—that Respondent "reserves the right to take disciplinary action up to and including termination"—also supports this conclusion.[2] (GC 7.)

Further, the August 22, 2013, discharge notice, signed by admitted 2(11) supervisor and 2(13) agent Project Manager Hunter Gilmore, provides that "[r]easonable rules of conduct are necessary for the orderly, efficient and safe operations of the Company's business...The company reserves the right to take disciplinary action up to and including termination...." (GC 7 and 11.) This reservation of rights clause clearly demonstrates that the Respondent unilaterally decided both the rules to which Terres would be subject and what disciplinary actions to impose for his alleged misconduct. This language closely tracks that the Board found to convey discretion in *Alan Ritchey*, 358 NLRB No. 40, slip op. at 11 (employer reserved "sole discretion" to impose discipline without progressing through each stage of its stated disciplinary procedure).

Moreover, the August 22, 2013, discharge notice cites insubordination as a ground for discipline leading up to and including termination. (GC 7.) The notice explicitly reserves to the Respondent alone the right to decide on a case-by-case basis how and whether to discipline employees. (GC 7.) Thus, as in *Alan Ritchey*, the Respondent has failed to establish a consistent past practice that demonstrates that the Respondent lacked discretion in how it would discipline Terres. 358 NLRB No. 40, slip op. at 10, n 2 (citing *Eugene Iovine*, 328 NLRB 294, 294 (1999) (employer's failure to establish consistent past practice prevented it from demonstrating that practice had not changed) and *Toledo Blade*, 343 NLRB 385, 387 (2004) (where there is a change from uniform rule on when discipline is to be imposed to case-by-case basis, such discretionary discipline was a mandatory subject of bargaining)). Under all of the circumstances, the undisputed facts demonstrate that Respondent exercised the requisite discretion to give rise to a responsibility to notify and bargain with the Union prior to suspending and discharging security officer Terres under *Alan Ritchey*.

Fourth, Respondent does not contend that Terres' allegedly insubordinate conduct presented "a serious, imminent danger to the employer's business or personnel" amounting to exigent circumstances. *Alan Ritchey*, 359 NLRB No. 40, slip op. at 8. What is more, had

[2] Respondent's otherwise irrelevant protestations (GC 3, p. 1-2; GC 4. P. 2; GC 9, 11, and 12, pp. 4, 7.) that the discharge was for "just cause" pursuant to the tentatively agreed-upon management rights clause likewise cements the conclusion that Respondent exercised discretion in its decisions to suspend and discharge Terres.

Respondent been justified in taking immediate disciplinary action against Terres without bargaining with the Union, it was duty-bound to engage in post-imposition bargaining with the Union, which Respondent most decidedly did not do. *Id.* Rather, Respondent's consistent position has been that it was incumbent upon the Union to request bargaining by filing a grievance. (GC 3, p. 3; GC 4, p. 1-2; GC 9, 11, and 12, pp. 3-4, 7.)

Fifth, Respondent's affirmative defense is premised upon the existence of a management rights article and a grievance arbitration procedure at the time that security officer Terres was disciplined. There was no interim grievance procedure in place on August 18, 2013, when security officer Terres was suspended, or on August 22, 2013, when he was discharged, because the parties' entire collective-bargaining agreement was not agreed upon at the time. Absent evidence that the parties intended a provision to be final and binding, Board law is clear that tentative agreements made during the course of negotiations are not final and binding until the final contract, in its entirety, is agreed upon.[3] *Hospital Perea Unidad*, 356 NLRB No. 150, slip op. at 12 (Apr. 29, 2011); *Vincent/Metro Trucking, LLC*, 355 NLRB 289, 293 (2010); *Taylor Warehouse Corp.*, 314 NLRB 516, 517 (1994), enfd. 98 F.3d 892 (6th Cir. 1996).

The Board has indeed held that parties negotiating for a contract have the ability to make a provision final and binding. *Stroehmann Bakeries, Inc.*, 289 NLRB 1523, 1534 (1988). To find it so, there must be evidence of intent to preclude any further negotiations on that provision. *Id.* at 1534. Although Respondent contends (GC 12, p. 6.) that there was a mutual intent to make the grievance and arbitration tentative agreement final and binding, the tentative agreement itself contradicts that contention. (GC 5.) The grievance and arbitration tentative agreement refers in Article 6.1 to "the disposition or resolution of any matter involving the meaning, interpretation or application of any provision of this Agreement" as the basis of a grievance. Likewise, Article 6.2 refers to "the specific provision of the Agreement that has allegedly been violated." Surely these references to "Agreement" do not refer to other parts of the grievance and arbitration tentative agreement. This would be contrary to purpose of a grievance and arbitration procedure, which is to govern substantive aspects of the parties' bargaining relationship. Rather, these provisions obviously refer to an "Agreement" that did not yet exist: the parties' collective-bargaining agreement. For the grievance and arbitration tentative agreement to have any meaning whatsoever it would have to be incorporated into a full collective-bargaining agreement. Such a collective-bargaining agreement did not exist until January 24, 2014, when the contract was fully executed. (GC 6 and 12, p. 2.)

Respondent argues that the Union could not disregard the grievance and arbitration tentative agreement and refuse to file a grievance because tentative agreements are binding. (GC 12, p. 8-9.) This argument demonstrates an incomplete understanding of Board law. Simply stated, *Lou's Produce*, 308 NLRB 1194, 1194 (1992), enfd 21 F.3d 1114 (9th Cir. 1994) (where the parties tentatively agreed that the employer would make pension fund contributions, it was unlawful for the employer to unilaterally discontinue making such contributions without bargaining to impasse), cited for this proposition by the Respondent, does not advance Respondent's cause. *Lou's Produce* does not establish that a tentative agreement is final and binding, but only that a party may not unilaterally change a tentative agreement. This is a basic

[3] The same reasoning applies to the management-rights tentative agreement.

principle of good faith bargaining that does not impinge on the Board's well-established rule that absent evidence that the parties intended a provision to be final and binding, tentative agreements made during the course of negotiations are not final and binding until the final contract, in its entirety, is agreed upon. *Hospital Perea Unidad*, 356 NLRB No. 150, slip op. at 12; *Vincent/Metro Trucking, LLC*, 355 NLRB at 293; *Taylor Warehouse Corp.*, 314 NLRB at 517. In this case, there was no such final agreement until January 24, 2014. Respondent's efforts to absolve itself of responsibility for its refusal to bargain over the mandatory subject of discretionary discipline fail.

B. RESPONDENT VIOLATED SECTION 8(a)(5) OF THE ACT BY FAILING TO FURNISH PRESUMPTIVELY RELEVANT INFORMATION TO THE UNION UPON REQUEST

Respondent's mistaken belief, articulated in its Motion (GC 12, pp. 5-6.), about the necessity for the Union to file a grievance in this case for the duty to supply information to attach arises from its meritless argument that it had no duty to bargain with the Union before suspending and discharging security officer Terres. The law is well-settled that the type of information request at issue—information regarding disciplinary action against a unit employee—is presumptively relevant and must be furnished on request. *Dish Network Serv. Corp.*, 339 NLRB 1126, 1134 (2003) *(citing Booth Newspapers, Inc.*, 331 NLRB 296, 299-300 (2000)). Here, Respondent admits that it failed to supply the requested information. (GC 9 and 11.)

It is undisputed that, following security officer Terres' being sent home from work about August 18, 2013, Union Director Thomas sent an e-mail message to owner Walls asking why Terres had been removed from active duty, why Respondent refused to tell Terres the reason that he was sent home, and asking for investigatory materials relied upon by Respondent such as witness statements. Such information relating to employee discipline has been unequivocally determined by the Board to be presumptively relevant. See *Memorial Hosp. of Salem County*, 359 NLRB No. 82, slip op. at 1, n.1 (Mar. 22, 2013) (employer refused to provide discipline-related information including the name, department, and hire date of disciplined employees, as well as the related personnel files, disciplinary forms, and policies assertedly underlying the discipline) (citing *Booth Newspapers*, 331 NLRB at 299-300).

Respondent's Motion is correct that it would have been obliged to furnish the requested information had the Union had filed a grievance. (GC 12, p. 5.) But, contrary to Respondent's contention, a pending or contemplated grievance is not the only source of the duty to provide the information. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-36 (1967) ("There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties, including grievances") (citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). It is decidedly not necessary that a union file a grievance for the duty to furnish information related to discipline to attach. *H.J. Scheirch Co.*, 300 NLRB 687, 688 (1990) (no pending grievance). Rather, the duty to supply the requested relevant information attaches because of the Union's representative status and the Union's duties related to that representative role. The basis for the presumption of relevance of information related to mandatory subjects of bargaining such as employee discipline is that "this information

is at the core of the employee-employer relationship," *Graphics Communications Local 13 v. NLRB*, 598 F.2d 267, 271 n.5 (D.C. Cir. 1959), and is relevant by its "very nature." *Emeryville Research Center v. NLRB*, 441 F.2d 880, 887 (9th Cir. 1971). By refusing to furnish the Union with presumptively relevant information related to security officer Terres' suspension, Respondent violated Section 8(a)(5) of the Act. See *Memorial Hosp. of Salem County*, 359 NLRB No. 82, slip op. at 1, (employer violated Sec. 8(a)(5) of the Act when it ignored and refused to furnish the requested disciplinary records); *Gaetano & Assocs. Inc.*, 344 NLRB 531, 541 (2005) (employer failed to respond to the union's request for information), enfd. mem. 183 Fed. Appx. 17 (2d Cir. 2006) (unpublished).

C. IN ADDITION TO THE BOARD'S TRADITIONAL REMEDIES, A MAKE-WHOLE REMEDY IS NECESSARY AND APPROPROPRIATE HERE

In addition to the notice posting and traditional remedies for the Respondent's refusal to furnish necessary and relevant information to the Union, the General Counsel asks that the Board order a make-whole remedy to rectify Respondent's breach of its statutory duty to bargain by failing to bargain with the certified sole representative of its employees over security officer Terres' suspension and discharge. Where an employer violates Section 8(a)(5) by unilaterally changing terms and conditions of employment, the Board orders the employer to restore the status quo ante by, among other things, reinstating and making whole discharged employees and rescinding discipline where the discharges or discipline resulted from the unlawful unilateral change. *Carey Salt Co.*, 358 NLRB No. 124, slip op. at 1, n.3 (2012) (ordering employer to reinstate and make whole any employees who may have lost their employment as a result of unilateral changes implemented when parties were not at a valid impasse), enfd in pertinent part, 736 F.3d 405 (5th Cir. 2013); *Alta Vista Regional Hosp.*, 355 NLRB 265, 268 (2010) (ordering employer to reinstate and make whole employees discharged as a result of unilateral change in practice concerning fit tests), supplemental decision, 357 NLRB No. 36, slip op. (Aug. 2, 2011), enfd, 697 F.3d 1181 (D.C. Cir. 2012). The *Alan Ritchey* Board clearly contemplated this remedy – its rationale for not applying its holding retroactively was that it "could well catch many employers by surprise and ... expose them to significant financial liability" for backpay awards.[4] 359 NLRB No. 40, slip op. at 11. If such a remedy were not available, the rule announced in *Alan Ritchey* would be meaningless. Employers would have no incentive to engage in preimposition bargaining over discipline if the only sanction for failing to do so was an order to bargain after the fact, i.e., after the discipline had been implemented.

Moreover, even if Respondent's contention were correct that its discipline of Terres was for cause, the Board's decision in *Anheuser-Busch, Inc.* does not bar a make whole remedy by the portion of Section 10(c) which precludes reinstatement and backpay for any employee who

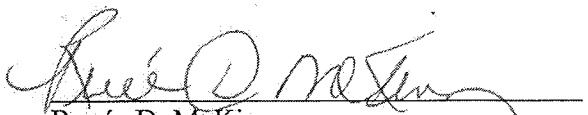
[4] In the original *Alan Ritchey* case, the Administrative Law Judge ordered a make-whole remedy for employees discharged unilaterally for inefficiency, absenteeism, threatening behavior, and insubordination. See *Alan Ritchey, Inc.*, 354 NLRB 628, 676-77 (2009) (two-member Board) (Board did not reach the remedial issue because it found that the Employer lawfully exercised discretion within the parameters of its preexisting disciplinary system).

"was suspended or discharged for cause."[5] 351 NLRB 644, 645 (2007) (Section 10(c) precludes a make-whole remedy for employees who are disciplined "for uncontested misconduct if that misconduct is detected through unilaterally and unlawfully implemented means."), rev. denied sub nom. *Brewers and Maltsters, Local Union No. 6 v. NLRB*, 303 F. App'x 899 (D.C. Cir. 2008). The reason for this is two-fold: first, *Anheuser-Busch* Board made clear that its holding was applicable only to "the facts of [that] case." 351 NLRB at 645. *Anheuser-Busch* involved a unilateral change where employees tested positive for drug use, unlike the instant case where the Respondent alleges insubordinate conduct. The original *Alan Ritchey* case likewise involved allegedly insubordinate conduct. 354 NLRB 659-60. Second, where an employer administers discretionary discipline, there is no established "cause" standard; therefore, it is not clear that the conduct at issue constituted cause for the type of discipline imposed. *Uniserv*, 351 NLRB 1361, 1361 n.1 (2007) (employees discharged under unilaterally implemented zero-tolerance drug use policy; reiterating that *Anheuser-Busch*'s remedy was applicable only to that case). Where the employer unilaterally exercises its discretion to determine whether and how severely to discipline employees, it is as if the Employer is setting a new "for cause" standard each time. Thus, a make-whole remedy is warranted here.

IV. CONCLUSION

The material facts here are undisputed and the General Counsel has demonstrated that it is due judgment as a matter of law. Respondent's affirmative defenses are entirely without merit. The Board should find that the Respondent violated Section 8(a)(5) of the Act as alleged in the First Amended Complaint. The General Counsel's Motion for Summary Judgment should be granted, Respondent's Motion denied, and appropriate relief, including the requested make-whole remedy, ordered. In the alternative, given that the Respondent and the General Counsel agree that there are no genuine issues of material fact necessitating a hearing before an administrative law judge, the Board should issue a Notice to Show Cause and set a briefing schedule in this case.

Respectfully submitted,



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Dated at Chicago, Illinois this 7th day of April 2014.

[5] Section 10(c) states in pertinent part: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause."

UNITED STATES COURT OF APPEALS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

SECURITY WALLS, LLC	)	
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and	)	**Case 13-CA-114946**
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INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) AND ITS LOCAL NO. 554	)	

CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT to be served upon the following via the NLRB's e-filing system on April 7, 2014:

Gary Shinners, Executive Secretary
Office of the Executive Secretary
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I further certify that I have caused a true and correct copy of the above-referenced document to be served on the following by U.S. Mail or e-mail on April 7, 2014:

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Dated at Chicago, Illinois this 7th day of April 2014.